LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
Katherine C. Lubin (State Bar No. 259826)
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Liaison Counsel

LABATON SUCHAROW LLP
Jonathan Gardner (*pro hac vice*)
Carol C. Villegas (*pro hac vice*)
Alec T. Coquin (*pro hac vice*)
140 Broadway
New York, NY 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

Co-Lead Counsel for the Class

MOTLEY RICE LLC
James M. Hughes (*pro hac vice*)
William S. Norton (*pro hac vice*)
Max N. Gruetzmacher (*pro hac vice*)
Michael J. Pendell (*pro hac vice*)
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Telephone: (843) 216-9000
Facsimile: (843) 216-9450

Co-Lead Counsel for the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BABAK HATAMIAN and LUSSA DENNJ SALVATORE, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ADVANCED MICRO DEVICES, INC., RORY P. READ, THOMAS J. SEIFERT, RICHARD A. BERGMAN, AND LISA T. SU,

Defendants.

CASE NO. 4:14-cv-00226-YGR (JSC)

CLASS ACTION

CLASS COUNSEL'S NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: February 27, 2018
Time: 2:00 p.m.
Place: Courtroom 1, 4th Floor
Judge: The Hon. Yvonne Gonzalez Rogers

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NOTICE OF MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 27, 2018, at 2:00 p.m., or as soon thereafter as they may be heard, Labaton Sucharow LLP ("Labaton Sucharow") and Motley Rice LLC ("Motley Rice," and collectively with Labaton Sucharow, "Class Counsel"), on behalf of themselves and all plaintiffs' counsel, will move for an order: (i) awarding attorneys' fees of 25% of the Settlement Fund; (ii) awarding payment of their litigation expenses; and (iii) approving Class Representatives' request for payment of their costs and expenses related to their representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4).

This motion is based upon the following Memorandum in support thereof; the Joint Declaration of Jonathan Gardner and James M. Hughes in Support of Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation and Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Joint Declaration" or "Joint Decl."), dated January 23, 2018, with annexed exhibits; the Stipulation and Agreement of Settlement, dated as of October 9, 2017 (ECF No. 333-1) ("Stipulation"); all of the prior pleadings and papers in this Action; and such additional information or argument as may be required by the Court.

A proposed order will be submitted with Class Counsel's reply submission on February 13, 2018, after the February 6, 2018 deadline for requesting exclusion or objecting has passed.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should approve Class Counsel's application for an award of attorneys' fees;

2. Whether the Court should approve Class Counsel's application for payment of expenses; and

3. Whether the Court should approve Class Representatives' requests for payment of their reasonable costs and expenses related to their representation of the Class, pursuant to the

PSLRA, 15 U.S.C. § 78u-4(a)(4).

MEMORANDUM OF POINTS AND AUTHORITIES

Class Counsel respectfully submit this memorandum of points and authorities in support of their application, on behalf of all plaintiffs' counsel, for: (i) an award of attorneys' fees of 25% of the Settlement Fund; (ii) payment of their litigation expenses in the amount of $2,812,817.52; and (iii) reimbursement in the aggregate amount of $23,223.25 to the Class Representatives, for their representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4).[1]

PRELIMINARY STATEMENT

As detailed in the Stipulation, Advanced Micro Devices, Inc. ("AMD" or the "Company"), Rory P. Read, Thomas J. Seifert, Richard A. Bergman, and Lisa T. Su (collectively, the "Individual Defendants" and, with AMD, the "Defendants") have agreed to pay or cause to be paid $29,500,000 to secure a settlement of the claims in this class action (the "Settlement"). This recovery is a very good result for the Class when evaluated in light of all the relevant circumstances – most notably the complicated nature of the claims and the risks of pursuing the Action through a decision on summary judgment and trial.

Class Counsel have not received any compensation for their successful prosecution of this case, which required four years of vigorous advocacy and approximately 62,765 hours of time. Class Counsel respectfully request that plaintiffs' counsel be awarded an attorneys' fee of 25% of the Settlement Fund, which will include any accrued interest, and that they be paid out of the Settlement Fund for litigation expenses in the amount of $2,812,817.52. This 25% fee request is consistent with the Ninth Circuit's "benchmark" for contingent fees and, as discussed below, would provide no multiplier of plaintiffs' counsel's lodestar. *See, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) ("Twenty-five percent is the 'benchmark' that district courts should award in common fund cases.").

[1] All capitalized terms not otherwise defined herein shall have the same meanings as those set forth in the Stipulation.

The requested fee has been approved by the Class Representatives, Arkansas Teacher Retirement System ("ATRS") and KBC Asset Management NV ("KBC"). *See* Ex. 1 ¶6, 13; Ex. 2 ¶¶6, 10.[2] The Class Representatives were actively involved in the litigation and believe that the Settlement represents a very good recovery for the Class. Ex. 1 ¶¶4-5, 13; Ex. 2 ¶¶4-5, 10.

As discussed herein, as well as in the Joint Declaration, it is respectfully submitted that the requested fee is fair and reasonable when considered under the applicable standards in the Ninth Circuit and is well within the range of awards in class actions in the Ninth Circuit and courts nationwide, particularly in view of the substantial risks of pursuing the Action, the considerable litigation efforts, and the results achieved for the Class. Moreover, the expenses requested are reasonable in amount and were necessarily incurred for the successful prosecution of the Action. As such, the requested fees and expenses should be awarded in full.

ARGUMENT

I. CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES OF 25% OF THE COMMON FUND SHOULD BE APPROVED

A. Counsel Are Entitled to an Award of Attorneys' Fees from the Common Fund

It is well settled that attorneys who represent a class and achieve a benefit for class members are entitled to a reasonable fee as compensation for their services. The Supreme Court has recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Vincent v. Reser*, No. C-11-03572 CRB,

[2] All exhibits referenced herein are annexed to the Joint Declaration of Jonathan Gardner and James M. Hughes in Support of Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation and Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Joint Declaration" or "Joint Decl."). For clarity, citations to exhibits that themselves have attached exhibits, will be referenced herein as "Ex.__-__." The first numerical reference is to the designation of the entire exhibit attached to the Joint Declaration and the second alphabetical reference is to the exhibit designation within the exhibit itself.

The Joint Declaration is an integral part of this motion and is incorporated herein by reference. For the sake of brevity, the Court is respectfully referred to the Joint Declaration for, *inter alia*, a detailed description of the allegations and claims, the procedural history of the Action, the risks faced by the Class in pursuing litigation, the negotiations that led to a settlement, and a description of the services provided by plaintiffs' counsel.

2013 WL 621865, at *4 (N.D. Cal. Feb. 19, 2013) (quoting *Boeing*, 444 U.S. at 478). Indeed, the Ninth Circuit has expressly reasoned that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The purpose of this rule, known as the "common fund doctrine," is to prevent unjust enrichment so that "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Wash. Pub. Power Supply Sys. Sec. Litig. (WPPSS)*, 19 F.3d 1291, 1300 (9th Cir. 1994), *aff'd in part*, *Class Plaintiffs v. Jaffe Schlesinger P.A.* 19 F.3d 1306 (9th Cir. 1994).

B. A Reasonable Percentage of the Fund Recovered Is the Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases

In *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class. . . ." *Id*. at 900 n.16. In this Circuit, a district court has discretion to award fees in common fund cases based on either the so-called lodestar/multiplier method or the percentage-of-the-fund method. *WPPSS*, 19 F.3d at 1296. However, the percentage-of-recovery method has become the prevailing method in the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002). Other circuits have similarly endorsed the percentage-of-recovery method.

The rationale for compensating counsel in common fund cases on a percentage basis is sound. Principally, it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time. Indeed, one of the nation's leading scholars in the field of class actions and attorneys' fees, Professor Charles Silver of the University of Texas School of Law, has concluded that the percentage method of awarding fees is the only method of fee awards that is consistent with class members' due process rights. Professor Silver notes:

> ***The consensus that the contingent percentage approach creates a closer harmony of interests between class counsel and absent plaintiffs than the lodestar method is strikingly broad.*** It includes leading academics, researchers at the RAND Institute for Civil Justice, and many judges, including those who contributed to the Manual for Complex Litigation, the Report of the Federal Courts Study Committee, and the report of the Third Circuit Task Force. Indeed, it is difficult to find anyone who contends

> otherwise. No one writing in the field today is defending the lodestar on the ground that it minimizes conflicts between class counsel and absent claimants.
> ***In view of this, it is as clear as it possibly can be that judges should not apply the lodestar method in common fund class actions.*** The Due Process Clause requires them to minimize conflicts between absent claimants and their representatives. The contingent percentage approach accomplishes this.

Charles Silver, Class Actions In The Gulf South Symposium, *Due Process and the Lodestar Method: You Can't Get There From Here*, 74 Tul. L. Rev. 1809, 1819-20 (2000) (emphasis added and footnotes omitted). This is particularly appropriate in cases under the PSLRA where Congress recognized the propriety of the percentage method of fee awards. *See* 15 U.S.C. § 78u-4(a)(6) ("Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class".).

C. Analysis Under the Percentage Method and the *Vizcaino* Factors Justify a Fee Award of 25% in this Case

In *Paul, Johnson, Alston & Hunt v. Graulty,* 886 F.2d 268 (9th Cir. 1989), the Ninth Circuit established 25% of a common fund as the "benchmark" award for attorneys' fees. *See also Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376-77 (9th Cir. 1993) (reaffirming 25% benchmark); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000) (same); *see also Destefano v. Zynga Inc.,* No. 12-cv-04007-JSC, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016) (citing *Vizcaino,* 290 F.3d at 1047) ("In common fund cases, the 'benchmark' percentage award is 25 percent of the recovery obtained, with 20 to 30 percent as the usual range.")

The guiding principle in this Circuit is that a fee award be "reasonable under the circumstances." *WPPSS*, 19 F.3d at 1296 (citation and emphasis omitted). In employing the percentage method, courts may perform a lodestar cross-check to confirm the reasonableness of the requested fee. *Vizcaino*, 290 F.3d at 1047 (affirming use of percentage method and applying the lodestar method as a cross-check). Here, as discussed in detail below, counsel have dedicated 62,765.80 hours to the prosecution of the case over the past four years, with a lodestar value of $31,122,958.75. *See* Ex. 8. Accordingly the requested fee, if granted, would be a fraction of counsel's lodestar in the case. Overall, in view of the substantial amount of work

dedicated to the case, the excellent result obtained, the contingent fee risk, the lodestar cross-check, and other relevant factors, an award of 25% of the recovery obtained for the Class would be appropriate under circumstances here.

The fee request readily satisfies the five *Vizcaino* factors that are often used by courts within the Ninth Circuit to evaluate the reasonableness of a requested fee: (1) the result achieved; (2) the risk of litigation; (3) the skill required and quality of the work; (4) awards made in similar cases; and (5) the contingent nature of the fee and financial burden carried by counsel. *Vizcaino*, 290 F.3d at 1048-50. The Ninth Circuit has explained that these factors should not be used as a rigid checklist or weighed individually, but, rather, should be evaluated in light of the totality of the circumstances. *Id*. As set forth below, all of the *Vizcaino* factors militate in favor of approving the requested fee.

1. The Result Achieved

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (noting 'the most critical factor is the degree of success obtained"); *Vizcaino*, 290 F.3d at 1048 n.7 (noting "[e]xceptional results are a relevant circumstance" in awarding attorneys' fees). Class Counsel submit that the $29.5 million proposed Settlement is an excellent result for the Class, both quantitatively and when considering the risk of a lesser (or no) recovery if the case proceeded through a decision on summary judgment and trial.

The $29.5 million Settlement compares very favorably to other securities fraud settlements. As reported by Cornerstone, the median settlement amount in securities fraud cases in 2016 was $8.6 million and $8.3 million from 1996 to 2015. *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2016 Review and Analysis* (Cornerstone Research 2017), (Ex. 10) at 1.

In terms of potentially recoverable damages, the Settlement represents a recovery of approximately 7% of the Class Representatives' damages expert's estimate of maximum recoverable damages ($430 million), assuming that the Class Representatives' prevailed on all claims, including all five alleged corrective disclosures. *See* Joint Decl. ¶¶5, 82. This

percentage of recovery compares well to recoveries in other securities class actions within the Ninth Circuit. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (noting $13.75 million settlement yielding 6% of potential damages after deducting fees and costs was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements") (citation omitted); *McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG- JMA, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a $12 million settlement recovering 7% of estimated damages was fair and adequate).

The recovery also compares favorably to recoveries achieved in cases in other Circuits. *See, e.g., In re Merrill Lynch & Co., Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) ("The Settlement Fund is approximately $40.3 million. The settlement thus represents a recovery of approximately 6.25% of estimated damages. This is at the higher end of the range of reasonableness of recovery in class actions securities litigations.") (citation omitted). The Settlement also presents a superior recovery when compared to the median percentage of estimated damages recovered in securities class action settlements in 2016, as calculated by Cornerstone Research, which was reported to be 2.5% in 2016. *See* Ex. 10 at 7, Figure 6.

The Settlement Amount thus provides a very favorable percentage of recovery for the Class.

2. The Risks of Litigation

The risk of further litigation is also an important factor in determining a fair fee award. *Vizcaino*, 290 F.3d at 1048 (noting "[r]isk is a relevant circumstance" in awarding attorneys' fees); *In re Pac. Enters. Sec. Litig.*, 47 F.3d at 379 (finding that attorneys' fees were justified "because of the complexity of the issues and the risks"); *see also Zynga*, 2016 WL 537946, at *17 (approving requested fee and noting that "as to the second factor . . . the risks associated with the case were substantial given the challenges of obtaining class certification and establishing the falsity of the misrepresentations and loss causation"). As set forth in detail in Section V. of the Joint Declaration, there is no question that the Class Representatives faced, and Class Counsel resisted, formidable defenses to liability and damages. Although the Class

Representatives have prevailed at several stages of the litigation, including the motion to dismiss and class certification, Defendants vehemently denied liability and there was no assurance that Class Representatives' claims would survive Defendants' motion for summary judgment and *Daubert* motions, let alone trial.

For instance, the Class Representatives faced substantial risks in ultimately proving that Defendants' statements and omissions were false and misleading at the time that they were made. Joint Decl. ¶¶71-73. Throughout the litigation, Class Counsel vigorously countered Defendants' argument that the majority of the alleged false statements were inactionable puffery or forward-looking statements protected by the PSLRA safe harbor. Defendants argued that there is no objective standard by which to measure whether Llano yield was "good" and whether demand for Llano was "strong" and that courts have consistently rejected claims based on similar statements. Defendants would also point the jury to "cautionary language" in AMD's public statements that warned of the risks of investing in AMD stock and of the risks associated with AMD's financial projections. *Id*. ¶71.

The Class Representatives also faced challenges in proving that Defendants' alleged misstatements were made with scienter, as required by the federal securities laws. *Id*. ¶¶74-76. Defendants denied that the Class Representatives could prove that there was an intentional or severely reckless violation of the Exchange Act. Among other things, Defendants would have continued to argue that they did not know what would ultimately occur in late 2011 regarding Llano supply, and, in particular, about the supply shortage that would emerge in 3Q11. Class Counsel skillfully marshalled evidence that Defendants had information concerning the Llano issues and that Defendants received reports, attended meetings, sent emails, and generally knew about the issues with Llano, and that given the amount of information Defendants actually reviewed and had access to that was contrary to public statements, Class Representatives would ultimately be able to prove their claims. *Id*.

Class Counsel worked closely with their three testifying experts in the areas of loss causation, materiality, damages, accounting, and the semiconductor industry. The Class Representatives intended to rely heavily on their expert witnesses, to present opinions on

whether Defendants' statements were contrary to internal Company data and internal statements as they relate to Llano yield and demand, among other things. *Id*., *e.g*., ¶48. Had Defendants prevailed in excluding any of the experts' opinions or had the jury discounted certain opinions, the presentation of many aspects of the Class Representatives' case would have been more difficult. Moreover, presenting this complex evidence persuasively to a jury created its own significant challenges, in addition to the risks inherently present in any "battle of the experts" that would have ensued.

In addition, the Parties have asserted significantly different positions regarding loss causation and damages. *Id*. ¶¶77-83. Defendants would principally have asserted that the "corrective" disclosures do not correct the allegedly false statements. For example, Defendants would argue that the only thing "corrected" by the statement on September 28, 2011 (the first alleged corrective disclosure) announcing that AMD would fall short of its previously issued guidance is AMD's 3Q11 earnings guidance, which plaintiffs do not challenge. *Id*. ¶¶78. Moreover, Defendants' were adamant in their arguments that the opinions of Class Representatives' damages and loss causation expert, Mr. Coffman must be excluded. If the Court agreed with Defendants' motion, presenting Class Representative's arguments on these issues would be exceptionally challenging. *See Nguyen v. Radient Pharms. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at *2 (C.D. Cal. May 6, 2014) (approving requested attorneys' fee and nothing the particular challenges of proving and calculating damages).

Overall, the Class Representatives faced the significant possibility that the Court or a jury would agree with Defendants' experts and, regardless of who would ultimately be successful at trial, there is no doubt that both sides would have had to present complex and nuanced information to a jury with no certainty as to the outcome. *See In re Omnivision*, 559 F. Supp. 2d at 1047 (noting that the risk of litigation, including the ability to prove loss causation and the risk that Defendants prevail on damages support the requested fee).

If not settled, the Class in this case faced the considerable risk of years of additional litigation with no guarantee of a greater recovery. Class Counsel worked tirelessly to achieve a

significant result for the Class in the face of very real risks. Under these circumstances, the requested fee is fully appropriate.

3. The Skill Required and the Quality of Work

Courts have recognized that the "prosecution and management of a complex national class action requires unique legal skills and abilities." *In re Heritage Bond Litig.*, No. 02-ML-1475-DT (RCX), 2005 WL 1594389, at *12 (C.D. Cal. June 10, 2005) (citation omitted); *see also Vizcaino*, 290 F.3d at 1048. '"This is particularly true in securities cases because the Private Securities Litigation Reform Act makes it much more difficult for securities plaintiffs to get past a motion to dismiss.'" *Zynga*, 2016 WL 537946, at *17 (quoting *Omnivision*, 559 F. Supp. 2d at 1047).

Here, in addition to the complexities of securities cases, the claims centered on the launch of AMD's "Llano" microprocessor, a processor that combined a Central Processing Unit with a Graphics Processing Unit onto a single computer chip. Class Counsel worked very hard to investigate, develop, and prove the claims that Defendants made materially false and misleading statements and omissions concerning Llano's production, launch, demand, sales, and margins, among other things, allegedly in violation of the Securities and Exchange Act of 1934 and to the detriment of the Class.

Class Counsel conducted its own proprietary investigation without the benefit of any government investigation or admission to formulate their theory of the case and develop sufficient facts to ultimately defeat Defendants' motion to dismiss the CAC. As set forth in the Joint Declaration, the investigation included, *inter alia*, reviewing and analyzing an extensive amount of publicly available information and data concerning Defendants, including press releases, news articles, transcripts, research reports, reports filed with the U.S. Securities and Exchange Commission, publications concerning the microprocessor technology industry and markets. The investigation also included the review of information provided by a consultant with expertise in microprocessor fabrication, and the microprocessor market and Class Counsel's in-house investigators' interviews of 64 former employees of AMD, GF, and AMD's customers. Joint Decl. ¶13.

Additionally, plaintiffs' counsel: (i) successfully moved for class certification; (ii) engaged in extensive and diligent fact discovery, including (a) an extremely labor intensive meet and confer process with Defendants on the scope of discovery which led to the production and review of approximately 2.5 million pages of documents; and (b) participating in 34 depositions (18 merits depositions (including each of the Individual Defendants), seven expert depositions, seven confidential witness depositions, and two Class Representative depositions); (iii) engaged in extensive and diligent expert discovery, including submission of expert and rebuttal reports from three experts as well as the review and analysis of reports from Defendants' four experts; (iv) opposed Defendants' motion for summary judgment and moved for partial summary judgment as to certain statements; (v) exchanged *Daubert* motions with Defendants; and (vi) engaged in thorough mediation efforts, which included the exchange of comprehensive mediation statements, and two separate full-day mediation sessions. *Id*. §§III.E through V.

Class Counsel have extensive and significant experience in the highly specialized field of securities class action litigation and are known leaders in the field. *See* Exs. 4-H & 5-H. Class Counsel have not only used their knowledge and skill from prior cases but also developed specific expertise in the issues presented here to overcome the obstacles presented by Defendants. The favorable Settlement is attributable in large part to the diligence, determination, hard work, and skill of Class Counsel, who developed, litigated, and successfully settled the Action.

The quality of opposing counsel is also important in evaluating the quality of the work done by Class Counsel. *See, e.g*., *Heritage Bond*, 2005 WL 1594389, at *12; *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Class Counsel were opposed in this Action by very skilled and highly respected lawyers from Latham & Watkins LLP and Cooley LLP, with well-deserved reputations for vigorous advocacy in the defense of complex civil cases such as this. In the face of this formidable opposition, Class Counsel were able to develop Class Representatives' case so as to persuade Defendants to settle the Action on terms favorable to the Class.

4. The Contingent Nature of the Fee and the Financial Burden Carried by Plaintiffs' Counsel

It has long been recognized that attorneys are entitled to a larger fee when their compensation is contingent in nature. *See Vizcaino*, 290 F.3d at 1048-50; *Omnivision*, 559 F. Supp. 2d at 1047 ("The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee."); *see also Zynga,* 2016 WL 537946, at *18 (noting that "when counsel takes on a contingency fee case and the litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award"). The Supreme Court has emphasized that private securities actions such as this provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (citation omitted); *Tellabs, Inc. v. Makor Issues & Rights, Ltd*., 551 U.S. 308, 319 (2007) (noting that the court has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions).[3]

Indeed, there have been many class actions in which plaintiffs' counsel took on the risk of pursuing claims on a contingency basis, expended thousands of hours and dollars, yet received no remuneration whatsoever despite their diligence and expertise. *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment to defendants after eight years of litigation, and after plaintiff's counsel incurred over $6 million in expenses and worked over 100,000 hours, representing a lodestar of approximately $48 million). Class Counsel are aware of many other hard-fought lawsuits where, because of the discovery of facts unknown when the case was

[3] Additionally, vigorous private enforcement of the federal securities laws and state corporation laws can only occur if private plaintiffs can obtain some semblance of parity in representation with that available to large corporate defendants. If this important public policy is to be carried out, courts should award fees that will adequately compensate private plaintiffs' counsel, taking into account the enormous risks undertaken with a clear view of the economics of a securities class action.

commenced, changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts by members of the plaintiff's bar produced no fee for counsel. *See, e.g.*, *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc*., 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); Joint Decl. ¶¶117-19. As the court in *In re Xcel Energy, Inc. Securities, Derivative & ERISA Litigation,* 364 F. Supp. 2d 980 (D. Minn. 2005) recognized, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *Id.* at 994 (citation omitted). Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. *See, e.g., Glickenhaus & Co. v. Household Int'l, Inc*., 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S.Ct. 2296 (2011)).

Here, because plaintiffs' counsel's fee was entirely contingent, the only certainty was that there would be no fee without a successful result and that such result would only be realized after significant amounts of time, effort, and expense had been expended. Unlike counsel for the Defendants, who were paid substantial hourly rates and reimbursed for their out-of-pocket expenses on a current basis, plaintiffs' counsel have received no compensation for their efforts during the course of the Action. Indeed, absent this Settlement, there was a sizeable risk that, at the end of the day, Class Members, as well as their counsel, would obtain no recovery. Plaintiffs' counsel have risked non-payment of $2,812,817.52 in expenses and $31,122,958.75 in time worked on this matter, knowing that if their efforts were not successful, no fee would be paid.

5. A 25% Fee Award Is the Ninth Circuit's Benchmark and Is Comparable with Awards in Similar Cases

In requesting a 25% fee, Class Counsel seek the benchmark that has been established by the Ninth Circuit. *Eichen*, 229 F.3d at 1256 ("We have also established twenty-five percent of the recovery as a 'benchmark' for attorneys' fees calculations under the percentage-of-recovery approach.") (citation omitted); *Zynga*, 2016 WL 537946, at *18 ("As to the fifth factor and awards in similar cases, several other courts—including courts in this District—have concluded that a 25 percent award was appropriate in complex securities class actions.") (citation omitted).

Fee awards of 25% or more have been awarded in numerous securities settlements with comparable or even greater settlements, in district courts throughout the Ninth Circuit. *See*, *e.g.*, *Zynga*, 2016 WL 537946, at *17 (awarding 25% fee of $23 million settlement); *Heritage Bond*, 2005 WL 1594403, at *18 (awarding 33.33% fee of $27,783,000 settlement); *In re Hewlett-Packard Co. Sec. Litig.*, Case No. SACV 11-1404-AG (RNBx), slip op. at 2-3 (C.D. Cal. Sept. 15, 2014) (awarding 25% fee of $57 million settlement) (Ex. 11); *In re PETCO Corp. Sec. Litig.*, No. 05-CV-0823 H (RBB), slip op. at 5-7 (S.D. Cal. Sept. 2, 2008) (awarding 25% fee of $20.25 million settlement) (Ex. 11); *Grasso v. Vitesse Semiconductor Corp.*, No. 06-CV-02639-R, slip op. at 3 (C.D. Cal. Nov. 17, 2008) (awarding 25% fee of approximately $20 million settlement (cash and stock)) (Ex. 11); *In re Sunpower Sec. Litig.*, Case No. CV 09-5473-RS, slip op. at 1 (N.D. Cal. July 3, 2013) (awarding 25% fee of $19.7 million settlement) (Ex. 11); *In re Amazon.com, Inc. Sec. Litig.*, No. C-01-0358-L, slip op. at 2 (W.D. Wash. Nov. 11, 2005) (awarding 25% fee of $27.7 million settlement) (Ex. 11).[4]

An examination of fee decisions in other federal jurisdictions in securities class actions with comparable settlements also shows that an award of 25% would be reasonable. *See, e.g., Weston v. RCS Capital Corp. et al.,* No. 1:14-CV-10136-GBD, slip op. at 2 (S.D.N.Y. Sept. 28, 2017) (awarding 30% fee of $31 million settlement) (Ex. 11); *In re NII Holdings Inc. Sec. Litig.*, Civ. No. 1:14-cv-00227-LMB-JFA, slip op. at 2 (E.D. Va. Sept. 16, 2016) (awarding 25% fee of

[4] A compendium of unreported slip opinions is submitted as Exhibit 11 to the Joint Declaration.

$41.5 million settlement) (Ex. 11); *In re Celestica Inc. Sec. Litig.*, No. 07-cv-00312-GBD, slip op. at 2 (S.D.N.Y. July 28, 2015) (awarding 30% fee of $30 million settlement) (Ex. 11); *In re OSG Sec. Litig.*, No. 1:12-cv-07948-SAS, slip op. at 1 (S.D.N.Y. Dec. 2, 2015) (awarding 30% fee of $31.6 million settlement) (Ex. 11).

Accordingly, it is respectfully submitted that the attorneys' fee requested here is well within the range of fees awarded by district courts within the Ninth Circuit and in comparable securities settlements nationwide.

6. Reaction of the Class

Although not articulated specifically in *Vizcaino*, district courts in the Ninth Circuit also consider the reaction of the class when deciding whether to award the requested fee. *See Heritage Bond*, 2005 WL 1594389, at *15 ("The presence or absence of objections . . . is also a factor in determining the proper fee award."). A total of 222,130 copies of the Settlement Notice and Claim Form have been sent to potential Class Members and the Court-approved Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire*. *See* Joint Decl. ¶¶92, 145; Ex. 3 ¶¶9, 11. In addition, the Stipulation and Settlement Notice, among other documents, were posted to a website dedicated to the Action (www.AMDSecuritiesLitigation.com). *Id*. ¶17. Although the objection deadline will not run until February 6, 2018, to date no objections to the requested amount of attorneys' fees and expenses have been received.[5]

7. Lodestar Cross-Check

Although an analysis of counsel's lodestar is not required for an award of attorneys' fees in the Ninth Circuit, a cross-check of the fee request with plaintiffs' counsel's lodestar demonstrates its reasonableness. *See Vizcaino*, 290 F.3d at 1048-50; *see also In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997) (comparing the lodestar fee to the percentage fee is an appropriate measure of a percentage fee's reasonableness).

[5] Class Counsel will address any future objections to the request for attorneys' fees and expenses in their reply papers, which will be filed with the Court by February 13, 2018.

Plaintiffs' counsel's combined "lodestar" is $31,122,958.75 for work through January 12, 2018, meaning that the requested fee, if awarded, would represent a significant negative "multiplier" of 0.24, or be just 24% of plaintiffs' counsel's combined lodestar. *See* Exs. 4-A; 5-A; 6-A; 7-A; and 8.[6] The Ninth Circuit has recognized that attorneys in common fund cases are frequently awarded a ***multiple*** of their lodestar, rewarding them "for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino,* 290 F.3d at 1051 (citation omitted). For example, the district court in *Vizcaino* approved a fee that reflected a multiple of 3.65 times counsel's lodestar. *Id*. The Ninth Circuit affirmed, holding that the district court correctly considered the range of multiples applied in common fund cases, and noting that a range of lodestar multiples from 1.0 to 4.0 are frequently awarded. *Id*.; *see also Steiner v. Am. Broad. Co.,* 248 F. App'x. 780, 783 (9th Cir. 2007) ("this multiplier [of 6.85] falls well within the range of multipliers that courts have allowed").

Courts have noted that a percentage fee that falls ***below*** counsel's lodestar supports the reasonableness of the award. *See, e.g., In re Portal Software, Inc. Sec. Litig*., No. C-03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) ("negative multiplier suggest[s] that the requested percentage based fee is fair and reasonable"); *In re Amgen Inc. Sec. Litig*., Case No. CV 7-2536 PSG (PLAx), 2016 WL 10571773, at *9 (C.D. Cal. Oct 25, 2016) (same); *In re Biolase, Inc. Sec. Litig*., Case No. SACV 13-1300-JLS (FFMx), 2015 WL 12720318, at *8 (C.D. Cal. Oct. 13, 2015) (same). Moreover, a negative multiplier, like the negative multiplier here, means that Class Counsel are seeking to be paid "for only a portion of the hours that they expended on the action." *Amgen*, 2016 WL 10571773, at *9.

Plaintiffs' counsel's lodestar represents 62,765.80 hours of work at counsel's 2017 hourly rates.[7] With respect to these rates, which range from $510 to $1050 per hour for partners, $675

[6] Plaintiffs' counsel's lodestar is also reported according to the category of work conducted. *See* Exs. 4-B; 5-B; 6-B; and 7-B.

[7] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *Rutti v. Lojack Corp. Inc*., No. SACV 06-350 DOC JCX, 2012 WL 3151077, at *11 (C.D. Cal. July 31, 2012) ("it is well-established that counsel is entitled to current, not historic, hourly rates") (citing *Jenkins*, 491 U.S. at 284).

to $995 per hour for of counsels or senior counsels, and $275 to $800 per hour for other attorneys, Class Counsel submit that they are comparable or less than those used by peer defense-side law firms litigating matters of similar magnitude. Sample defense firm rates in 2017, gathered by Labaton Sucharow from bankruptcy court filings nationwide, often exceed these rates. *See* Joint Decl. ¶127; Ex. 9.

Additional work will also be required of Class Counsel on an ongoing basis, including: correspondence with Class Members; preparation for, and participation in, the final approval hearing; supervising the claims administration process being conducted by the Claims Administrator; moving for leave of the Court to distribute the Net Settlement Fund in accordance with the recommendation of the Claims Administrator; and supervising the distribution of the Net Settlement Fund to Class Members who have submitted valid Claim Forms. However, Class Counsel will not seek payment for this additional work.

II. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Plaintiffs' counsel have incurred expenses in the aggregate amount of $2,812,817.52 in prosecuting the Action. Ex. 8. These expenses are outlined in counsel's declarations submitted to the Court concurrently herewith. Exs. 4-C through G; 5-C through G; 6-C through D; and 7-C.

As the *Vincent* court noted, "[a]ttorneys who created a common fund are entitled to the reimbursement of expenses they advanced for the benefit of the class." *Vincent v. Reser*, No. 11-03572 (CRB), 2013 WL 621865, at *5 (N.D. Cal. Feb. 19, 2013) (citation omitted). In assessing whether counsel's expenses are compensable in a common fund case, courts look to whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'") (citation omitted).

Here, the expenses sought by plaintiffs' counsel are of the type that are charged to hourly paying clients and, therefore, should be paid out of the common fund. The main expense here

relates to work performed by Class Representatives' experts ($1,680,536.26 or approximately 60% of total expenses). As discussed in the Joint Declaration, in addition to the expert report prepared and utilized at the class certification stage (*see* Joint Decl. ¶¶27-29), Class Representatives employed experts to opine and consult in areas concerning materiality, market efficiency, causation, damages, forensic and technical accounting, as well as microprocessor chip manufacturing, supply, and demand (*id*. ¶¶48-51, 53, 134). Class Counsel received crucial advice and assistance from these experts throughout the course of the Action, from drafting the CAC through discovery, the prolonged mediation process, and summary judgment. Class Counsel utilized these experts in order to efficiently frame the issues, gather relevant evidence, make a realistic assessment of provable damages, and structure a resolution of the Action. *Id* .

As explained above and in the Joint Declaration, a vast amount of fact discovery was taken in the case, in addition to expert discovery. Class Counsel seek $323,093.85 (11% of total expenses) relating to litigation support services, such as the costs associated with electronic discovery and adding hyperlinks to court filings. Expenses totaling $133,871 (5% of total expenses) were incurred in connection with the 34 depositions taken in the case, and in retaining independent counsel for the confidential witnesses in the case ($56,990.09). *Id*. ¶135.

Class Counsel was also required to work late hours and travel in connection with court appearances, witness meetings, depositions, two mediations, and settlement-related hearings ($248,431 or 9% of aggregate expenses). *Id*. ¶136. Such expenses are reimbursable. *See In re Immune Response Sec. Litig*, 497 F. Supp. 2d 1166, 1177(S.D. Cal. 2007) (reimbursement for travel expenses . . . is within the broad discretion of the Court).

Courts also routinely approve expenses associated with mediation (here $35,147.23 for Class Counsel's share). *See, e.g.*, *Franco v. Ruiz Food Prods., Inc.*, No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *22 (E.D. Cal. Nov. 27, 2012) (noting that mediation fees are among the "types of fees" that are "routinely reimbursed. The work done by the mediators was crucial to the resolution of the Action. *See* Joint Decl. ¶138.

The expenses here also include the costs of factual and legal research ($73,218 or 3% of total expenses). *Id*. ¶137. These are the charges for primarily computerized factual and legal

research services such as LEXIS/Nexis and Westlaw. It is standard practice for attorneys to use LEXIS/Nexis and Westlaw to assist them in researching legal and factual issues and reimbursement is proper. *See Immune Response*, 497 F. Supp. 2d at 1177.

In sum, plaintiffs' counsel's expenses, in an aggregate amount of $2,812,817.52, were reasonable and necessary to the prosecution of the Action and should be approved.[8]

III. CLASS REPRESENTATIVES' REQUEST FOR PSLRA REIMBURSEMENT

The PSLRA, 15 U.S.C. § 78u-4(a)(4), limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." Here, as detailed in their respective declarations, attached as Exhibits 1 and 2 to the Joint Declaration, Class Representatives are seeking the aggregate amount of $23,223.25 in expenses related to their active participation in the Action.[9] Each Class Representative assisted with discovery efforts, produced documents, had a representative be deposed, and ATRS attended both mediation sessions.

Many cases have approved reasonable payments to compensate class representatives for the time, effort, and expenses devoted by them on behalf of a class. *See, e.g.*, *Hewlett-Packard,* Case No. SACV 11-1404-AG (RNBx), slip op. at 2-3 (awarding costs and expenses to four class representatives in the amount of $5,654.61, $2,922.24; $4,970.00; $6,570.00, respectively) (Ex. 11); *In re Broadcom Corp. Class Action Litig.*, No. CV-06-5036-R (CWx) (C.D. Cal. Dec. 4, 2012), slip op. at 2 (awarding costs and expenses to class representative in the amount of $21,087 (Ex. 11); *McPhail,* 2009 WL 839841, at *8 (approving awards to six class

[8] At the October 24, 2017 preliminary approval hearing, the Court indicated that it would like additional information about the Claims Administrator's estimate of its fees and costs in connection with the Settlement. That information is provided in Exhibit 3 (¶¶22-24) submitted herewith. Such fees and costs are payable from the Settlement Fund pursuant to ¶¶19-20 of the Stipulation.

[9] This total is broken down as follows: (i) ATRS - $8,348.25 based on 104 hours dedicated to the case at rates ranging from $41.75 per hour to $108.91 per hour; and (ii) KBC - $14,875 based on 106.25 hours dedicated to the case at $140 per hour.

representatives ranging from $923.20 to $10,422.30 and noting that "the requested reimbursement is consistent with payments in similar securities cases"). As explained in one decision, courts "award such costs and expenses to both reimburse named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as provide an incentive for such plaintiffs to remain involved in the litigation and incur such expenses in the first place." *Hicks v. Stanley*, No. 01 Civ. 10071(RJH), 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005).

Class Counsel and the Class Representatives respectfully submit that the amounts sought here are eminently reasonable based on the requesting parties' active involvement in the Action from inception to settlement. *See* Exs. 1 and 2.

CONCLUSION

For all the foregoing reasons, Class Counsel respectfully request that the Court award attorneys' fees of 25% of the Settlement Fund, litigation expenses in the amount of $2,812,817.52, and PSLRA reimbursement to KBC in the amount of $14,875 and ATRS in the amount of $8,348.25.

Dated: January 23, 2018

Respectfully submitted,

s/ Jonathan Gardner

LABATON SUCHAROW LLP
Jonathan Gardner (*pro hac vice*)
Carol C. Villegas (*pro hac vice*)
Alec T. Coquin (*pro hac vice*)
140 Broadway
New York, NY 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

MOTLEY RICE LLC
James M. Hughes (*pro hac vice*)
William S. Norton (*pro hac vice*)
Max N. Gruetzmacher (*pro hac vice*)
Michael J. Pendell (*pro hac vice*)
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Telephone: (843) 216-9000
Facsimile: (843) 216-9450

Co-Lead Counsel for Class Representatives and the Class

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
Katherine C. Lubin (State Bar No. 259826)
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 23, 2018

/s/ Jonathan Gardner
JONATHAN GARDNER

Mailing Information for a Case 4:14-cv-00226-YGR

Hatamian et al. v. Advanced Micro Devices, Inc. et al.

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Melanie Marilyn Blunschi**
  melanie.blunschi@lw.com,christina.teeter@lw.com,#sflitigationservices@lw.com, sf-litigation-services-4917@ecf.pacerpro.com,melanie-blunschi-5434@ecf.pacerpro.com
- **Alec T. Coquin**
  acoquin@labaton.com,kgutierrez@labaton.com,electroniccasefiling@labaton.com
- **Jonathan Gardner**
  jgardner@labaton.com,kgutierrez@labaton.com,jjohnson@labaton.com, cvillegas@labaton.com,tdubbs@labaton.com,ryamada@labaton.com,cboria@labaton.com,acoquin@labaton.com,fmalonzo@labaton.com,acarpio@labaton.com, agreenbaum@labaton.com
- **Patrick Edward Gibbs**
  pgibbs@cooley.com,bgiovannoni@cooley.com
- **Michael M. Goldberg**
  michael@goldberglawpc.com
- **Max Nikolaus Gruetzmacher**
  mgruetzmacher@motleyrice.com,wtinkler@motleyrice.com
- **Jason C. Hegt**
  jason.hegt@lw.com,jason-hegt-2094@ecf.pacerpro.com
- **James Michael Hughes**
  jhughes@motleyrice.com,mgruetzmacher@motleyrice.com,erichards@motleyrice.com, kweil@motleyrice.com
- **Willem F. Jonckheer**
  wjonckheer@schubertlawfirm.com,kmessinger@schubertlawfirm.com, epawson@schubertlawfirm.com,paralegal@schubertlawfirm.com
- **Joy Ann Kruse**
  jakruse@lchb.com,kbenson@lchb.com
- **Nicole Catherine Lavallee**
  nlavallee@bermantabacco.com,ysoboleva@bermantabacco.com
- **Sharon Maine Lee**
  slee@lchb.com
- **Katherine Collinge Lubin**
  klubin@lchb.com,rtexier@lchb.com
- **Meredith B. Miller**
  mbmiller@motleyrice.com

- **William H. Narwold**
  bnarwold@motleyrice.com,mjasinski@motleyrice.com,kweil@motleyrice.com,
  ajanelle@motleyrice.com

- **William S. Norton**
  bnorton@motleyrice.com

- **Michael J. Pendell**
  mpendell@motleyrice.com

- **Matthew Rawlinson**
  matt.rawlinson@lw.com,zoila.aurora@lw.com,
  matthew-rawlinson3894@ecf.pacerpro.com,jenny.duckworth@lw.com,
  #SVLitigationServices@lw.com

- **Paul J. Scarlato**
  pscarlato@labaton.com

- **Carol C. Villegas**
  cvillegas@labaton.com,kgutierrez@labaton.com,thoffman@labaton.com,
  jchristie@labaton.com,mpenrhyn@labaton.com,acoquin@labaton.com,
  fmalonzo@labaton.com,acarpio@labaton.com,electroniccasefiling@labaton.com

- **Avraham Noam Wagner**
  avi@thewagnerfirm.com

- **Kara M. Wolke**
  kwolke@glancylaw.com

- **Roger W. Yamada**
  ryamada@labaton.com,kgutierrez@labaton.com,fmalonzo@labaton.com,
  acarpio@labaton.com,electroniccasefiling@labaton.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing).

☐ (No manual recipients)